

HUMAN SERVICES BOARD

## INTRODUCTION

## FINDINGS OF FACT

2. CDD made a decision recently to remove the child from the petitioner's home in order to reunite her with a half-sibling. The petitioner felt that this was against the child's interests and aired her grievance in an internal

review conducted by the Commissioner of CDD. CDD issued a written decision denying her request and told her in the decision that she could appeal to the Human Services Board.

3. The petitioner appealed to the Board on September 20, 2005. On September 27, 2005, the petitioner's attorney filed a motion asking for the Board to immediately stay the proceedings wherein CDD planned to remove the child from the petitioner's home on September 30, 2005.

4. The hearing officer convened an emergency telephone status conference on September 28, 2005 to discuss the motion. No representative of CDD could be made available for that conference. The hearing officer told the petitioner's attorney that CDD has an obligation to advise all licensees that they may appeal grievances to the Board but that the Board did not have jurisdiction over all the types of claims that might be brought to it; that the Board had a long history of dismissing appeals concerning placement decisions due to a lack of subject matter jurisdiction, that the Board had no mechanisms for conducting emergency hearings in this kind of case, that the Board had no power to stay any proceedings of CDD, and that the forum with apparent jurisdiction over this matter was the juvenile court which awarded custody of the child to CDD. CDD was then informed

by the hearing officer of the contents of her conversation with the petitioner's attorney.

5. On September 29, 2005, CDD filed a motion to deny the relief sought by the petitioner and to dismiss the appeal for lack of subject matter jurisdiction.

6. The petitioner filed no further argument in the case.

#### ORDER

The petitioner's motion to stay CDD's proceedings is denied and CDD's motion to dismiss is granted.

#### REASONS

Persons who have foster care licenses are proper parties before the Board, but only for the purpose of contesting actions taken with regard to their licenses or for matters tangential to a juvenile court proceeding, such as payment for an ordered benefit. See 3 V.S.A. § 3091(a), In re Kirkpatrick 147 Vt. 637. The Board has consistently declined to hear appeals regarding placement issues of children in CDD custody (see Fair Hearings 17,726, 15,108, 9,455 and 7,809) based on a statute granting the juvenile court exclusive jurisdiction over children who are in need of placement services:

- (a) The juvenile court shall have exclusive jurisdiction over all proceedings concerning any child who is . . . a child in need of care or supervision brought under the authority of this chapter, except as otherwise provided in this chapter.
- (b) The orders of the juvenile court under the authority of this chapter shall take precedence over any order of any court of this state, except an order establishing child support, to the extent inconsistent herewith.

33 V.S.A. § 5503

As the Board said in Fair Hearing No. 17,726, departmental "decisions regarding placement of children in its custody are at the 'heart' of CHINS proceedings and, thus, must be considered within the exclusive jurisdiction of the juvenile court." Id at p. 5. The Board stated that "[a]ssuming jurisdiction in this matter [a placement issue] would in effect place the Board in the position of 'second guessing' the court under whose authority SRS [CDD's predecessor agency] acts in placement matters." Id. At p. 4.

For the above reasons, it must be concluded that the Board lacks subject matter jurisdiction to hear an appeal of a decision by CDD regarding the placement of a child living in the petitioner's foster care home. The fact that the Commissioner of CDD informed the petitioner that she could

take her appeal here does not confer subject matter jurisdiction upon this Board. Although this advice certainly created some confusion and perhaps delay for the petitioner in this matter, it is certainly a better course for CDD to let the Board decide if it has jurisdiction than to make that decision itself by not informing the petitioner of her right to appeal. As CDD is correct that the Board lacks jurisdiction to hear this appeal, its motion to dismiss must be granted.

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